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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3685 OF 2003
IN
SUIT NO.3307 OF 2003

Bank of India ... Plaintiff

V/s.

M/s.Gran Heal Pharma Ltd & Anr. ... Defendants

Mr.S.Shetye with Ms.Swati Deshpande i/b M/s.M.S. Bodhanwala & Co. for Plaintiff
Mr.G.R. Kinklaswala for Defendants

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 5, 2006**

P.C.:

. The present Motion has been filed for appointment of the Court Receiver in respect of the leased machines which are described in the Schedule to the agreement, annexed as Exhibit C to the plaint. It is the case of the plaintiff that by an agreement dated 1.11.2000, certain machines were leased to the defendants on payment of lease rent. This agreement was to remain valid for a period of 60 months. Payments accordingly were made by the defendants in respect of the leased machinery upto 31.12.2001. A notice was issued on 11.5.2002 claiming arrears of lease rentals. This notice has not been replied by the defendants. A fresh notice was issued on 29.6.2002 calling upon the defendants to pay the outstanding amounts of lease rentals. As the defendants did not heed the demand of the plaintiff, by notice dated 10.6.2003 the plaintiff terminated the lease agreement.

2. The present suit is for a declaration that the lease agreement dated 1.11.2000 stands duly and validly terminated and that Defendant No.1 has no right, title or interest in respect of the leased machines. The plaintiff has also sought a direction against the Defendants to hand over and deliver to it the leased machinery. In the alternative, the plaintiff has claimed an amount of Rs.1,26,52,250/- from the Defendants.

3. The Defendants have filed a reply to the Motion, contending that this Court has no jurisdiction to entertain the suit and hence, no interim relief could be granted. The Defendants have claimed that it is only the Debt Recovery Tribunal constituted under the Recovery of Debts due to Banks and Financial Institutions Act which would have jurisdiction to grant any relief to the Plaintiff. The learned Counsel appearing for the Defendants has sought to argue that any debt which is owed to the bank can be recovered by the Bank only before the Debt Recovery Tribunal (hereinafter referred to as ‘DRT’). He submits that the word "debt" as defined under section 2(g) of the aforesaid Act must be literally construed since it is "any liability" which is claimed as due from any person by a bank or financial institution. He submits that the word "liability" must be given the widest possible meaning and, therefore, the lease rentals or the arrears

in payment of lease rentals must be construed as a debt which can be recovered under the aforesaid Act. According to the learned Counsel, the Bank has leased the machines as part of its business activity. He further submits that section 19 empowers the DRT to grant interim relief and pass interlocutory orders and, therefore, all the reliefs which are claimed in the present Suit can be claimed by the Bank by preferring an application before the DRT. Reliance is placed by the learned Counsel on the judgment of the Calcutta High Court in *Hindustan Laminators Pvt. Ltd. & Ors. v/s. Central Bank of India & Ors.,* **AIR 1998 CALCUTTA 300** and of the Apex Court in *United Bank of India v/s. Debts Recovery Tribunal & Ors.,* **(1999) 4 SCC 69** in support of his submissions.

4. The learned Counsel appearing for the Bank points out that in a similar set of facts, a learned Single Judge of this Court (Rebello, J.) has taken the view that the reliefs which are claimed in the present Suit can be claimed before this Court. The Bank need not be compelled to prefer an application before the DRT.

5. The submissions of the learned Counsel for the Defendants cannot be accepted for more than one reason. The term "debt" is defined under section 2(g) of the aforesaid Act thus:

> 2(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application

6. The word "liability" has not been defined in the Act. The Calcutta High Court in *Hindustan Laminators Pvt. Ltd. & Ors.* (supra) has held that the word liability should be given the widest possible meaning. The Court has observed that the term would include a pecuniary obligation.

7. The Supreme Court in the case of *United Bank of India* (supra) has laid down the principle which must be applied to test whether a particular claim falls within the jurisdiction of the DRT. The Apex Court has observed as follows:

> 15. In the case in hand, there cannot be any dispute that the expression "debt" has to be given the widest amplitude to mean any liability which is alleged as due from any person by a bank during the course of any business activity undertaken by the bank either in cash or otherwise, whether secured or unsecured, whether payable under a decree or order of any court or otherwise and legally recoverable on the date of the application. <u>In ascertaining the question whether any particular claim of any bank or financial institution would come within the purview of the tribunal created under the Act, it is imperative that the entire averments made</u>

> by the plaintiff in the plaint be looked into and then find out whether notwithstanding the specially-created tribunal having been constituted, the averments are such that it is possible to hold that the jurisdiction of such a tribunal is ousted. (Emphasis supplied)

8. The averments as seen from the plaint are essentially that the plaintiff leased the machinery to the defendants and the defendants were expected to pay the fixed monthly lease rent of Rs.2,32,926/- from the first day of the agreement, together with the agreed interest. There is a further pleading that Defendant No.1 failed and neglected to pay the lease rentals in time and the Bank had demanded the payment which was not made and hence the bank terminated the agreement. The present Suit is filed for a declaration that the Bank had validly terminated the agreement.

9. In my view, the suit has been filed principally for a declaration that the contract has been terminated and for return of the machinery. This being the cause of action, the DRT would not have exclusive jurisdiction over the lis as submitted on behalf of the Defendants. The suit has not been filed for recovery of a debt. The amounts mentioned in the particulars of claim are incidentally claimed. Therefore this Court would have jurisdiction to entertain and try the suit. As stated earlier, a similar view has been taken by Rebello, J. in the case of *Centurion Bank Ltd. v/s. Indian Lead Ltd. & Anr.*, **2000 COMPANY CASES Vol. 100 p. 537**.

9. The learned Counsel for the Defendants has not advanced any submissions on the merits of the reliefs claimed in the motion. The Plaintiff has made out a case for appointing a Receiver for the leased machines.

10. Motion is therefore, made absolute in terms of prayer clause (a).

11. The advocate for the Defendants seeks stay of this order for four weeks. Stay granted for four weeks from today.